(7)

Supreme Court, U.S.
FILED
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CLERK

No. 99-1884

IN THE

Supreme Court of the United States

LACKAWANNA COUNTY DISTRICT ATTORNEY; THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA,

Petitioners,

v.

EDWARD R. COSS, JR.,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 24, 2000
CERTIORARI GRANTED OCTOBER 10, 2000

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The following opinions, findings of fact, conclusions of law, orders and memorandum have been omitted in printing this joint appendix because they appear in the appendix of the Petition for a Writ of Certiorari on the following pages:

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Memorandum and Order of the United States District Court for the Middle District of Pennsylvania Dated and Filed June 8, 1998 ..... 95a

APPENDIX A — DISTRICT COURT DOCKET ENTRIES

U.S. District Court
Middle District of Pennsylvania (Harrisburg)

CIVIL DOCKET FOR CASE #: 94-CV-1481

Coss v. Lackawanna County District Attorney, et al

* * *

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
9/15/94	1	PETITION FOR WRIT OF HABEAS CORPUS Amt: IFP Pending (ps) [Entry date 09/19/94]
9/15/94	2	MOTION by petitioner Edward D. Coss Jr. to proceed in forma pauperis (ps) [Entry date 09/19/94]
9/15/94	3	Brief by petitioner Edward D. Coss Jr. in support of Writ of Habeas Corpus Federal Rule 2254 (ps) [Entry date 09/19/94]
9/19/94	4	MOTION by petitioner Edward D. Coss Jr. to amend Habeas Corpus Federal Rule 2254 (Relief Sought), and for appointment of counsel w/ prop. ord. (ps) [Entry date 09/19/94]
9/19/94	—	Prisoner letter issued as to petitioner Edward D. Coss Jr. with Notice and Consent Form (ps) [Entry date 09/19/94]

9/19/94	—	Case file w/ copy of docket to M.J. Blewitt. Copy of docket to J. Caldwell. (ps) [Entry date 09/19/94]
9/26/94	5	ORDER by Magistrate Thomas M. Blewitt; IT IS HEREBY ORDERED THAT: 1. Petitioner's application for leave to proceed in forma pauperis (Doc 2) is granted. 2. The Clerk is directed forthwith to serve a copy of the petition and this order by cert mail on the Atty Gen of The Co of Pa and the DA of Lacka Co, Pa. 3. Respondents, within 20 days of the date of this order, shall respond to the petition for writ of habeas corpus in the manner required by Rule 5, 28 USCA. foll. Sec 2254. 4. A determination as to whether there will be a hearing will be made after the filing of a response. 5. Petitioner may, if he so desires, file a reply to the response within 10 days of its filing. 6. The Clerk is directed to note the address of the DA of Lacka Co, Pa, on the front of the docket sheet in this case. All documents filed by the parties and by the Court shall be served upon the District Attorney. Copy to plf. Copy of Petition and this Order to Atty Gen of Pa and DA of Lacka Co. by cert mail. (jb) [Entry date 09/27/94]
9/27/94	—	Remark; Doc #5 to Blewitt (jb) [Entry date 09/27/94]

10/5/94	6	RETURN OF SERVICE executed upon respondent Lackawanna County Di 9/29/94 (rm) [Entry date 10/05/94]
10/5/94	6	RETURN OF SERVICE executed upon respondent PA Attorney General 9/30/94 (rm) [Entry date 10/05/94]
10/6/94	7	Letter to Lackawanna Co. D.A. Barrasse from respondent PA Deputy Attorney General Filipi RE D.A.'s office is best to handle case. (rm) [Entry date 10/07/94]
10/7/94	—	7 to J.Blewitt. (rm) [Entry date 10/07/94]
10/31/94	8	LETTER — to clerk from petitioner dated 10/26/94 asking the status of the response to petition and his Motion for appt of cn. (jb) [Entry date 11/01/94]
11/1/94	—	Remark; Doc #8 to Blewitt (jb) [Entry date 11/01/94]
11/1/94	9	ORDER by Magistrate Thomas M. Blewitt Petnr's motion for appointment of counsel [4-2] is DENIED. (cc: all counsel and petnr) (jw) [Entry date 11/02/94]
11/1/94	10	ORDER by Magistrate Thomas M. Blewitt 1. Petnr's motion to amend Habeas Corpus Federal Rule 2254 (Relief Sought) [4-1] is hereby DENIED. 2. Petnr's request for

		evidentiary hrg (Doc. 4 Par. 4) is hereby DENIED. (cc: all counsel and pltf) (jw) [Entry date 11/02/94]
11/1/94	11	ORDER by Magistrate Thomas M. Blewitt Response to petition ddl is due 11/8/94 for PA Attorney General, for Lackawanna County Di (cc: all counsel and pltf) (jw) [Entry date 11/02/94]
11/2/94	—	Remark Doc #9 to Mag Judge Blewitt (jw) [Entry date 11/02/94]
11/2/94	—	Remark Doc #10 to Mag Judge Blewitt (jw) [Entry date 11/02/94]
11/2/94	—	Remark Doc #11 to Mag Judge Blewitt (jw) [Entry date 11/02/94]
12/7/94	12	RESPONSE by respondent Lackawanna County Di, respondent PA Attorney General to habeas corpus petition [1-1] (ps) [Entry date 12/07/94]
12/12/94	13	ORDER by Magistrate Thomas M. Blewitt; IT IS HEREBY ORDERED THAT: 1. The Respondents shall file a brief on the issues raised in Pars 11 and 17 of respondents' answer to the Petition on or by Jan 3, 1995. 2. Said response shall conform to the requirements set forth at Rule 5, 28 USCA foll. Sec 2254. Copy to plf and cn. (jb) [Entry date 12/13/94]

12/12/94	14	Letter to court from petitioner Edward R. Coss Jr. re discussion of case (jw) [Entry date 12/14/94]
12/13/94	—	Remark; Doc #13 to Blewitt (jb) [Entry date 12/13/94]
12/14/94	—	Remark Doc #14 to Mag Judge Blewitt (jw) [Entry date 12/14/94]
12/15/94	15	REPLY — by petitioner to respondents response. Copy to atty for deft. (jb) [Entry date 12/15/94]
12/15/94	—	Remark; Doc #15 to Blewitt (jb) [Entry date 12/15/94]
1/19/95	16	REQUEST — by petitioner for permission to file for sum judg as defts did not comply with Order to file briefs by Jan 3, 1995. (jb) [Entry date 01/20/95]
1/20/95	—	Remark; Doc #16 to Blewitt (jb) [Entry date 01/20/95]
1/23/95	17	ORDER by Mag. Thomas M. Blewitt THAT respdts shall comply w/court's order of 12/12/94 by 2/1/95. (cc: all counsel) (rm) [Entry date 01/23/95]
1/27/95	18	Letter to court from petitioner Edward R. Coss Jr. indicating that he does not want

		the magistrate on this case. (cl) [Entry date 01/27/95]
1/27/95	19	LETTER — to Mag from petitioner dated 1/25/95 objecting to Mag/Judge's orders. Copy to cn. (jb) [Entry date 01/30/95]
1/30/95	—	Remark; Doc #19 to Blewitt (jb) [Entry date 01/30/95]
2/27/95	20	MEMORANDUM BRIEF FILED — by respondents regarding order [17-1], relative to paragraphs 11 and 17 of respondents answer; C of S (jb) [Entry date 02/27/95]
2/27/95	—	Remark; Doc #20 to Blewitt (jb) [Entry date 02/27/95]
3/10/95	21	REQUEST — by petitioner for entry of default for failure to file a brief, as directed in Courts Order of 1/23/95, by 2/1/95. C of S (jb) [Entry date 03/10/95]
3/10/95	22	MOTION — by petitioner for default judgment against defts for failure to file brief by 2/1/95. C of S in Doc #21 (jb) [Entry date 03/10/95]
3/10/95	—	Remark; Doc #21 and 22 to Blewitt (jb) [Entry date 03/10/95]

4/10/95	23	Letter to court from petitioner Edward R. Coss Jr. request for status of default & case. (jw) [Entry date 04/11/95]
4/11/95	—	Remark Doc #23 to Mag Judge Blewitt (jw) [Entry date 04/11/95]
4/24/95	24	MOTION by petitioner for summary judgment (jw) [Entry date 04/25/95]
4/24/95	25	Affidavit of Edward R. Coss, Pltf in support motion for summary judgment [24-1] (jw) [Entry date 04/25/95]
4/25/95	—	Remark Docs #24 & 25 to Mag Judge Blewitt (jw) [Entry date 04/25/95]
4/25/95	26	Letter to court from petitioner Edward R. Coss Jr. RE status of case. (rm) [Entry date 04/25/95]
4/25/95	—	26 to J.Blewitt. (rm) [Entry date 04/25/95]
4/27/95	27	Letter to court from petitioner dated 4/20/95 re discussion of case (jw) [Entry date 04/27/95]
4/27/95	—	Remark Doc #27 to Mag Judge Blewitt (jw) [Entry date 04/27/95]
5/1/95	28	Letter to court from petitioner Edward R. Coss Jr. regarding the respondents response to the petition (cl) [Entry date 05/02/95]

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5/2/95	—	Remark: doc 28 to MJ Blewitt (cl) [Entry date 05/02/95]
6/21/95	29	MOTION by petitioner Edward R. Coss Jr. to compel w/ C of S. (ps) [Entry date 06/21/95]
7/5/95	30	Letter to court from petitioner Edward R. Coss Jr. RE status of case. (rm) [Entry date 07/05/95]
7/5/95	—	30 to J.Blewitt. (rm) [Entry date 07/05/95]
7/13/95	31	ORDER by Magistrate Thomas M. Blewitt denying request for entry of default [21-1] denying motion for default judgment against defts [22-1] denying motion for summary judgment [24-1] denying motion to compel [29-1] (cc: all counsel) (rm) [Entry date 07/13/95]
7/13/95	—	31 to J.Blewitt. (rm) [Entry date 07/13/95]
7/13/95	32	ORDER by Mag. Blewitt (1) Federal Public Defender is appted for Edward R. Coss Jr. (2) Clerk to serve copy of docket, petn & brief in sup. of petn., respt's ans. to petn., traverse, & memo brief of respdts relative to para 11 & 17 of respts' answer (3) In person status conf. to be held on 8/7/95 at 10:00 am in chambers. (cc: all counsel) (rm) [Entry date 07/13/95]

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7/31/95	33	ORDER by Magistrate Thomas M. Blewitt — 1. The in person status conference scheduled for 8/7/95 at 10:00 a.m. has been rescheduled to take place on 8/7/95 at 9:30 a.m. (cc: pltf & all counsel) (ao) [Entry date 07/31/95]
7/31/95	—	Remark: Doc #33 to Mag Judge Blewitt (ao) [Entry date 07/31/95]
8/7/95	34	ORDER by Magistrate Thomas M. Blewitt 1. Petnr shall file a brief on the issue of exhaustion by 8/28/95. 2. respondent shall file a response to petnr's brief by 9/18/95. (cc: all counsel) (ls) [Entry date 08/07/95]
8/7/95	—	Remark doc 34 to Blewitt (ls) [Entry date 08/07/95]
8/8/95	35	Minute Sheet of Status Conference held on 8/7/95 at 9:30 a.m. REMARKS: Scheduling discussed. As appropriate order will issue. CTR: None (ao) [Entry date 08/08/95]
8/8/95	—	Remark: Doc #35 to Mag Judge Blewitt (ao) [Entry date 08/08/95]
8/23/95	36	BRIEF FILED by petitioner Edward R. Coss Jr. regarding exhaustion. (rm) [Entry date 08/24/95]
8/24/95	—	36 to J.Blewitt. (rm) [Entry date 08/24/95]

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8/29/95	37	Voucher — for payment of transcript in the amount of $135.00. (TMB) (jb) [Entry date 08/30/95]
9/15/95	38	Notice by respondent of filing of state court appellate brief. w/attchmt & c/s. (rm) [Entry date 09/15/95]
9/15/95	—	38 to J.Blewitt. (rm) [Entry date 09/15/95]
9/15/95	39	BRIEF FILED by respondent Lackawanna County Di, respondent PA Attorney General regarding exhaustion & c/s. (rm) [Entry date 09/15/95]
9/15/95	—	39 to J.Blewitt. (rm) [Entry date 09/15/95]
9/21/95	40	MOTION by petitioner Edward R. Coss Jr. to extend time to file a reply to memo of resp. re: exhaustion Cert. of con. C of S. (bs) [Entry date 09/22/95]
9/22/95	—	Remark doc. 40 to Mag/Judge Blewitt on 9/22/95. (bs) [Entry date 09/22/95]
9/26/95	41	ORDER by Magistrate Thomas M. Blewitt granting motion to extend time to file a reply to memo of resp. re: exhaustion [40-1]. Coss to file reply brief by 10/10/95. (cc: all counsel) (rm) [Entry date 09/26/95]
9/26/95	—	41 to J.Blewitt. (rm) [Entry date 09/26/95]

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10/6/95	42	Reply brief by petitioner in support of (jb) [Entry date 10/10/95]
10/10/95	—	Remark; Doc #42 to Blewitt (jb) [Entry date 10/10/95]
10/30/95	43	MEMORANDUM AND ORDER: by Magistrate Thomas M. Blewitt 1. In accordance with the attached Memo, the Petnr is hereby excused from fulfilling the exhaustion requirement. 2. The Petnr is afforded 30 days to file an amd petn. (cc: all counsel) (ls) [Entry date 10/31/95]
10/31/95	—	Remark doc 43 to Blewitt (ls) [Entry date 10/31/95]
11/29/95	44	Amendment by petitioner to habeas corpus petition [1-1] and c/s (jw) [Entry date 11/30/95]
11/29/95	45	MOTION by petitioner Edward R. Coss Jr. for expansion of record to include the state record from the Lackawanna County Court of Common Pleas with Cert of Con/Non-Concurrence and Cert of Service. (ao) [Entry date 11/30/95]
11/30/95	—	Remark Doc #44 to Mag Judge Blewitt (jw) [Entry date 11/30/95]
11/30/95	—	Remark: Doc #45 to Mag Judge Blewitt. (ao) [Entry date 11/30/95]

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11/30/95	46	SUPPLEMENTAL CERTIFICATE OF CONCURRENCE — filed by atty for plf. RE: Motion on Expansion of record. C of S (jb) [Entry date 12/01/95]
12/1/95	—	Remark; Doc #46 to Blewitt (jb) [Entry date 12/01/95]
12/6/95	47	ORDER by Magistrate Thomas M. Blewitt; IT IS HEREBY ORDERED AND DECREED that the Motion is granted and the record in the instant case is expanded to include the entire court file, including transcripts, from the Lacka County Court of Common Pleas in Commonwealth v. Coss, No. 645 of 1986. William P. Rinaldi, Clerk of Judicial Records, Lacka County Courthouse, Scr., Pa. is hereby directed to transmit the record to the Federal Court Clerk, Scr., Pa. The Clerk is directed to file and docket said file accordingly upon receipt. (cc: all counsel and Rinaldi by cert mail) (jb) [Entry date 12/06/95]
12/8/95	48	Acknowledgement Received William P. Rinaldi, Clerk of Judicial Records by cert mail on 12/7/95 (ls) [Entry date 12/12/95]
12/12/95	—	Remark doc 48 to Blewitt (ls) [Entry date 12/12/95]

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12/12/95	49	ORIGINAL COUNTY COURT RECORD — received from Lacka Co Court House as per Order of Court. "Copies made for file" ORIG RETURNED, VIA CERT MAIL ON 12/13/95. (jb) [Entry date 12/13/95] [Edit date 12/13/95]
12/14/95	50	NOTICE — by petitioner of change of address to Coal Township. CC on letter. (jb) [Entry date 12/18/95]
12/18/95	—	Remark; Doc #50 to Blewitt (jb) [Entry date 12/18/95]
12/18/95	51	Acknowledgement Received — received from Wm. Rinaldi, County Court in Scr., Pa for case file of plf dated 12/11/95. (jb) [Entry date 12/18/95]
12/18/95	—	Remark; Doc #51 to Blewitt (jb) [Entry date 12/18/95]
2/2/96	52	LETTER — to court from cn for petitioner dated 1/26/96 stating there has been no response to Amended Habeas Corpus Petition. (jb) [Entry date 02/02/96]
2/2/96	53	ORDER by Magistrate Thomas M. Blewitt; IT IS HEREBY ORDERED that respondents shall show cause before this Court by Feb 12, 1996, why petitioner should not be granted habeas corpus relief

		in this action, as respondents have failed to respond to the Amended Habeas Corpus Petition. Copy to plf and cn. (jb) [Entry date 02/02/96]
2/12/96	54	RESPONSE by respondent Lackawanna County DA, respondent PA Attorney General to Amended Petition for Writ of habeas corpus petition [1-1] (ao) [Entry date 02/13/96]
2/12/96	55	Response by respondent Lackawanna County DA, respondent PA Attorney General to the direction of the ct that cause be shown as to why habeas corpus relief ought not be granted with Cert of Service and Exhibits. (ao) [Entry date 02/13/96]
2/13/96	—	Remark: Doc #54 & #55 to Mag Judge Blewitt. (ao) [Entry date 02/13/96]
2/16/96	56	Reply by Edward R. Coss Jr. to response to show cause why H/C relief should not be granted. C of S (ls) [Entry date 02/16/96]
2/16/96	—	Remark doc 56 to Blewitt (ls) [Entry date 02/16/96]
3/4/96	57	LETTER — to court from Atty O'Malley dated 2/13/96 Re: Explanation for not answer Petition on time. (jb) [Entry date 03/04/96]

3/4/96	—	REMARK — Doc #57 to Blewitt (jb) [Entry date 03/04/96]
3/28/96	58	ORDER by Magistrate Thomas M. Blewitt — 1. Petnr shall file a brief on the issues raised in the Amended Petition by 4/11/96. 2. Respndts shall file a response by 4/25/96. 3. Petnr may file a reply to the response by 5/3/96. 4. A determination as to whether there will be a hearing made after the filing of a response. (cc: pltf & all counsel) (ao) [Entry date 03/28/96]
3/28/96	—	REMARK — Doc #58 to Mag Judge Blewitt. (ao) [Entry date 03/28/96]
3/28/96	59	LETTER — to court atty for plf dated 2/22/96 enclosing a copy of the Pa Superior Court's opinion in Co v. Coss and stating this opinion supports the argument set forth in plf's reply filed on Feb 16, 1996. CC thereon. (jb) [Entry date 03/29/96]
3/29/96	—	REMARK — Doc #59 to Blewitt (jb) [Entry date 03/29/96]
4/10/96	60	MOTION by petitioner Edward R. Coss Jr. to extend time to file habeas corpus brief with Cert of Concurrence and Cert of Service. (ao) [Entry date 04/11/96]
4/11/96	—	REMARK — Doc #60 to Mag Judge Blewitt. (ao) [Entry date 04/11/96]

4/12/96	61	ORDER by Magistrate Thomas M. Blewitt — Pltf's motion to extend time to file habeas corpus brief is GRANTED. Coss shall file a brief on the issue raised in the Amended Habeas Corpus Petition by 5/9/96. Respts shall file a response by 5/23/96. Coss may file a reply to the response by 5/31/96. A determination as to whether there will be a hearing will be made after the filing of a response. (cc: pltf & all counsel) (ao) [Entry date 04/12/96]
4/12/96	—	REMARK — Doc #61 to Mag Judge Blewitt. (ao) [Entry date 04/12/96]
5/9/96	62	BRIEF FILED by petitioner Edward R. Coss Jr. regarding amended H/C petn. [44-1] (rm) [Entry date 05/12/96]
5/9/96	63	NOTICE by petitioner Edward R. Coss Jr. OF CHANGE OF ADDRESS to SCI-Rockview (jw) [Entry date 05/14/96]
5/12/96	—	62 to J.Blewitt. (rm) [Entry date 05/12/96]
5/14/96	—	REMARK — Doc #63 to M.J. Blewitt (jw) [Entry date 05/14/96]
5/23/96	64	AMENDED MEMORANDUM BRIEF — of respondents on the matter of petitioner's amended habeas corpus petition; C of S (jb) [Entry date 05/23/96]

5/23/96	—	REMARK — Doc #64 to Blewitt (jb) [Entry date 05/23/96]
5/23/96	65	MEMORANDUM brief of respondents on the matter of petnr's and h/c petn. C of S (ls) [Entry date 05/24/96]
5/24/96	—	REMARK — doc 65 to Blewitt (ls) [Entry date 05/24/96]
5/31/96	66	REPLY BRIEF — by petitioner to the Commonwealth's amended Memo brief on the matter of pet's amended habeas corpus petition; C of S (jb) [Entry date 06/03/96]
6/3/96	—	REMARK — Doc #66 to Blewitt (jb) [Entry date 06/03/96]
6/27/96	67	ORDER; by Magistrate Thomas M. Blewitt; IT IS HEREBY ORDERED AS FOLLOWS: 1. For the reasons set forth in the Petitioner's Reply Brief dated May 31, 1996, (Doc 66) the Respondent is to file a brief that addresses the merits of the issues set forth in the Petitioner's Amended Petition for Writ of HC (Doc 44) within 10 days of the date of this order. Copy to plf and cn. (jb) [Entry date 06/27/96]
6/27/96	—	REMARK — Doc #67 to Blewitt (jb) [Entry date 06/27/96]

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7/8/96	68	Additional MEMORANDUM brief by respondents on the matter of petnr's amd H/C Petn and C of S (ls) [Entry date 07/09/96]
7/9/96	—	REMARK — doc 68 to Blewitt (ls) [Entry date 07/09/96]
7/22/96	69	REPLY by petitioner Edward R. Coss Jr. to Commonwealth's additional memo brief (Doc #68) with Cert of Service. (ao) [Entry date 07/24/96]
7/24/96	—	REMARK — Doc #69 to Mag Judge Blewitt. (ao) [Entry date 07/24/96]
10/23/96	70	ORDER by Magistrate Thomas M. Blewitt; the petitioner is afforded 15 days to either withdraw the unexhausted claims contained in the Amended Petition for Writ of HC and proceed on the exhausted claims, or to withdraw the petition in its entirety and pursue the claims in state court. Copy to plf and cn. (jb) [Entry date 10/23/96]
10/23/96	—	REMARK — Doc #70 to Blewitt (jb) [Entry date 10/23/96]
11/6/96	71	MAIL RETURNED addressed to Edward R. Coss Jr. containing order of 10/23/96 "Released" (ls) [Entry date 11/06/96]

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11/6/96	—	REMARK — doc 71 to Blewitt (ls) [Entry date 11/06/96]
11/7/96	72	2nd PETITION FOR WRIT OF HABEAS CORPUS and C of S (ls) [Entry date 11/08/96]
11/20/96	73	ORDER TO SHOW CAUSE: by Magistrate Thomas M. Blewitt — Respdts, w/in 20 days, shall respond to the second amended petition for writ of habeas corpus; response to petition due 12/10/96 for PA Attorney General, for Lackawanna County. A determination as to whether there will be a hearing will be made after the filing of a response. Petnr may, if desires, file a reply to the response w/in 10 days of its filing (cc: petnr, all counsel) (ao) [Entry date 11/20/96]
11/20/96	—	REMARK — Doc #73 to Mag Judge Blewitt. (ao) [Entry date 11/20/96]
12/2/96	74	MAIL RETURNED addressed to Edward R. Coss Jr., re-mailed to FPD Melinda Ghilardi. (ep) [Entry date 12/03/96]
12/9/96	75	ANSWER — to second amended HC petition by respondents [72-1] C of S (jb) [Entry date 12/11/96]
12/11/96	—	REMARK — Doc #75 to Blewitt (jb) [Entry date 12/11/96]

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12/12/96	76	ORDER by Magistrate Thomas M. Blewitt — Respdts shall file a brief addressing the issues raised in paragraph 3(2)(A) and (B) of petnr's Second Amended Habeas Corpus Petition. (cc: petnr & all counsel) (ao) [Entry date 12/16/96] [Edit date 12/16/96]
12/16/96	—	REMARK — Doc #76 to Mag Judge Blewitt. (ao) [Entry date 12/16/96]
12/26/96	77	AMENDMENT by respondent to 2nd amd h/c petn [75-1] C of S (ls) [Entry date 12/26/96]
12/26/96	—	REMARK — doc 77 to Blewitt (ls) [Entry date 12/26/96]
1/17/97	78	MAIL RETURNED addressed to Edward R. Coss Jr. (Order of 12/12/96 marked 'refused') (ep) [Entry date 01/22/97]
4/10/97	79	Report and Recommendation by Magistrate Thomas M. Blewitt recommending ptnrs petition for writ of h/c be denied.; objections to R and R due 4/29/97 (cc: all counsel) (ep) [Entry date 04/11/97]
4/11/97	—	Case file placed in Rm 423 awaiting obj's to Mag. Blewitt's R & R (last day 4/29/97). (ep) [Entry date 04/11/97]

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4/24/97	80	MOTION by petitioner Edward R. Coss Jr. to extend time until 5/8/97 to file objs to the mag/judge's r/r & c/s (jw) [Entry date 04/25/97]
4/25/97	—	REMARK — Doc #80 to Hsbg (jw) [Entry date 04/25/97]
4/30/97	—	REMARK — case file w/ copy of docket to Judge Caldwell (cl) [Entry date 04/30/97]
5/2/97	—	REMARK — Case file to J. Caldwell. (am) [Entry date 05/02/97]
5/6/97	81	ORDER by Judge William W. Caldwell granting motion to extend time until 5/8/97 to file objs to the mag/judge's R & R. [80-1] Objections to R/R due 5/8/97 (cc: all counsel & Ct.) (jh) [Entry date 05/07/97]
5/8/97	82	OBJECTIONS by petitioner to [79-1] REPORT AND RECOMMENDATION and C of S (ls) [Entry date 05/09/97]
5/8/97	83	MEMORANDUM in support by petitioner to objections to report & recommendation and C of S (ls) [Entry date 05/09/97]
5/9/97	—	REMARK — docs 82, 83 to HBG (ls) [Entry date 05/09/97]

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6/16/97	84	ORDER by Judge William W. Caldwell — this matter be transferred to a judge in the Scranton Division for consideration of the Magistrate Judge's report and recommendation and such further proceedings as needed. Case reassigned to Judge Thomas I. Vanaskie (cc: pltf, all counsel) (cl) [Entry date 06/18/97]
6/18/97	—	REMARK — case file to KC to be forwarded to Judge Vanaskie (cl) [Entry date 06/18/97]
8/11/97	85	NOTICE by petitioner Edward R. Coss Jr. OF CHANGE OF ADDRESS (ep) [Entry date 08/11/97]
1/13/98	86	NOTICE by petitioner Edward R. Coss Jr. OF CHANGE OF ADDRESS (ep) [Entry date 01/13/98]
1/20/98	87	ORDER by Judge Thomas I. Vanaskie THAT: 1) Obj's to those parts of M.J.Blewitt's R/R concerning petnr's ineffective assistance of counsel claims are SUSTAINED; 2) Petnr's obj's to that part of the R/R concerning the computation of Petnr's sentence on the 1986 conviction are OVERRULED on the ground that the challenge to the validity of his sentence is MOOT; 3) Telephonic Scheduling conf set for 10:00 a.m. on 2/6/98 (cc: all counsel) (ep) [Entry date 01/20/98]

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1/28/98	88	LETTER to court dated 1/26/98 from petitioner Edward R. Coss Jr. requesting telephonic scheduling conference be continued. (ep) [Entry date 01/29/98]
1/28/98	89	ORDER by Judge Thomas I. Vanaskie granting letter [88-1] Scheduling conf re-scheduled for 5:00 p.m. on 2/4/98 (cc: all counsel) (ep) [Entry date 01/29/98]
2/5/98	90	MINUTE SHEET of 2/4/98 scheduling conference. (rm) [Entry date 02/09/98]
2/9/98	91	ORDER by Judge Thomas I. Vanaskie THAT:; Status report due 2/28/98,; Evidentiary hearing set for 4/20/98 The scheduling of a pre-hearing conference will be deferred until rect of a letter report from petnr's counsel pertaining to the number of witnesses and anticipated length of such evidentiary hearing. (cc: all counsel) (ep) [Entry date 02/09/98]
2/25/98	92	LETTER to court dated 2/24/98 from petitioner Edward R. Coss Jr. advising Court of number of anticipated witnesses. (ep) [Entry date 02/25/98]
4/10/98	93	ORDER by Judge Thomas I. Vanaskie In-court evidentiary hearing 9:00 a.m. on 4/20/98; If hearing is not concluded on that date, the date for resumption of the hearing

		will be set by further order of this Court. (cc: all counsel) (ep) [Entry date 04/10/98]
4/15/98	94	WRIT OF HABEAS CORPUS AD TESTIFICANDUM by Judge Thomas I. Vanaskie: The Warden of the State Correctional Institution at Camp Hill, Pennsylvania, is directed to produce the person of Edward R. Coss, Jr. at the United States District Court, William J. Nealon Federal Bldg. & U.S. Courthouse, 235 North Washington Avenue, Scranton, Pennsylvania on Monday, April 21, 1998, at 9:00 a.m. for an evidentiary hearing, and to keep the prisoner safe in custody and confine him from day to day when not appearing before the Court. The prisoner shall be presented at the United States Marshal's Office on the second floor. At the final conclusion of the proceedings, the Warden of the State Correctional Institution at Camp Hill shall return Edward R. Coss, Jr. to the State Correctional Institution at Camp Hill. (cc: all counsel, 3 cert cc to U.S. Marshal Scranton, 3 cert cc to Warden, telefax to Warden) (ep) [Entry date 04/15/98]
4/16/98	95	MOTION SEALED — (pursuant to Court Order) (ep) [Entry date 04/16/98] [Edit date 04/16/98]

4/16/98	96	ORDER SEALED (pursuant to Court Order) re sealed motion [95-1] (ep) [Entry date 04/16/98]
4/21/98	97	MINUTE SHEET of Evidentiary hearing held 4/20/98, J.Vanaskie presiding CTR: Janes (ep) [Entry date 04/21/98]
5/12/98	98	TRANSCRIPT filed of Evidentiary hearing held 4/20/98 before J.Vanaskie; CTR: Kristin L. Janes (ep) [Entry date 05/12/98]
5/29/98	99	CJA FORM 24 (approved for transcript payment) in the sum of $ 142.50, voucher # 67808112477, CTR: Janes (bs) [Entry date 05/29/98]
6/8/98	100	MEMORANDUM AND ORDER: by Judge Thomas I. Vanaskie denying habeas corpus petition [72-1] Case terminated (ORIGINAL TO SECURITY, cert cc to file, cc: all counsel) (ep) [Entry date 06/08/98]
6/8/98	101	PLTF'S EXHIBIT LIST by petitioner Edward R. Coss Jr. (ep) [Entry date 06/10/98]
6/25/98	102	APPLICATION by petitioner for certificate of appealability. C/S (cm) [Entry date 06/29/98]

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7/2/98	103	ORDER by Judge Thomas I. Vanaskie — The ptnrs' application for Certificate of Appealability [102-1] is granted as to the issue identified at III-D of this Court's Memorandum decision of June 8, 1998. (cc: all counsel) (cl) [Entry date 07/02/98]
7/2/98	—	REMARK — doc 102 & 103 to closed file (cl) [Entry date 07/02/98]
7/6/98	104	NOTICE OF APPEAL by petitioner Edward R. Coss Jr. from District Court order filed 6/8/98 [100-2] (Filing fee waived, TPO mailed to attorney, certified copies of notice of appeal, order being appealed and docket entries along with info/ack letter to USCA. (cc: cnsl, Ct., MJ Blewitt, USCA) (cl) [Entry date 07/09/98]
8/3/98	105	NOTIFICATION by Circuit Court of Appellate Docket Number 98-7416. (jh) [Entry date 08/04/98]
8/4/98	—	REMARK — Document 105 sent to appeal section in Scranton. (jh) [Entry date 08/04/98]
8/7/98	106	TRANSCRIPT PURCHASE ORDER filed by Daniel Siegel, Esquire stating that the transcript is already on file in the U.S.D.C. (jh) [Entry date 08/10/98]

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8/10/98	—	DISTRICT COURT RECORD COMPLETE FOR PURPOSES OF APPEAL (jh) [Entry date 08/10/98]
8/10/98	—	CERTIFIED COPY of docket entries to be filed as the cert. list in lieu of the record. (jh) [Entry date 08/10/98]
8/10/98	—	REMARK — Document 106 sent to Scranton. (jh) [Entry date 08/10/98]
8/24/98	107	ACKNOWLEDGEMENT RECEIVED — by USCA of receipt on 8/12/98 of cert. list in lieu of the record. (jh) [Entry date 08/25/98]
8/25/98	—	REMARK — Document 107 sent to Scranton. (jh) [Entry date 08/25/98]
10/14/98	108	STENO NOTES of proceedings. Evidentiary Hearing 4/20/98 CTR: K. Janes (sm) [Entry date 10/14/98]
10/14/98	—	REMARK — Doc #108 (CR Notes) to CFR (sm) [Entry date 10/14/98]
4/12/99	—	REMARK — case file to C/A per Lynn Caswell. (sm) [Entry date 04/12/99]
4/12/99	—	Record on appeal transmitted to Circuit consisting of docs 2-107, (sm) [Entry date 04/12/99] [Edit date 04/12/99]

4/15/99	109	Acknowledgement Received from C/A re: actual record with copies of docket (sm) [Entry date 04/15/99]
8/2/99	110	COPY of Appellate Court Order: A majority of the active judges having voted for rehearing en banc in the above appeal, it is ordered that the Clerk of this Court vacate the opinion filed June 28, 1999 and list the above for rehearing en banc at the convenience of the court. (ps) [Entry date 08/04/99]
3/23/00	111	CERTIFIED COPY OF JUDGMENT — ORDERED & ADJUDGED by this crt. that the jgm. of the said District Court entered 6/8/98, be, and the same is hereby reversed and the cause is remanded to the District Court with direction to issue a writ of habeas corpus conditional on the Commonwealth's option of conducting a new trial and if the new trial produces a verdict different from the prior verdict, the state must resentence Mr. Coss to acct. for any enhancement due to this guilty verdict or the Commonwealth has the option of proceeding into resentencing on the 1990 conviction. Costs taxed against appellees. All of the above in accord. w/the opinion of this crt. A cert. true copy dtd. 2/29/00. [104-1] cc: Crt. (am) [Entry date 03/24/00]

3/24/00	—	REMARK — Case file sent to Judge Vanskie per COA reversal/remand. (am) [Entry date 03/24/00]
3/27/00	—	REMARK — Doc 110 to CJ Vanaskie. (kn) [Entry date 03/27/00]
5/18/00	112	ORDER by Chief Judge Thomas I. Vanaskie Telephonic Status conference to be held at 8:30 on 5/22/00 Atty Siegel is responsible for place the call., Clerk of court is directed to fax order to counsel. (cc: all counsel court) (sm) [Entry date 05/18/00]
5/25/00	113	MINUTE SHEET of Status Conference held 5/22/00 CTR: NONE (sm) [Entry date 05/26/00]
7/10/00	114	PETITION by petitioner Edward R. Coss Jr. for release and to schedule evidentiary hearing; Cert. of Non-Conc.; C/S; Propo. (vg) [Entry date 07/11/00]
7/10/00	115	BRIEF by petitioner Edward R. Coss Jr. IN SUPPORT of petition for release and to schedule evidentiary hearing [114-1]; C/S. (vg) [Entry date 07/11/00]
7/11/00	—	REMARK — Docs. #114 and #115 to J. Vanaskie. (vg) [Entry date 07/11/00]

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7/18/00	116	LETTER to court dated 7/3/00 from petitioner Edward R. Coss Jr. re bail request. (sm) [Entry date 07/18/00]
7/18/00	117	LETTER to court dated 7/11/00 from petitioner Edward R. Coss Jr. re support of request for bail (sm) [Entry date 07/18/00]
7/18/00	118	ORDER by Chief Judge Thomas I. Vanaskie GRANTING motion for evidentiary hearing re petition for release to be held on 8/1/00 at 10:00 AM. [114-1]; 10:00 8/1/00 (cc: all counsel court) (sm) [Entry date 07/18/00]
7/26/00	119	EX PARTE MOTION/PETITION by petitioner Edward R. Coss Jr. for writ of habeas corpus ad testificandum; w/ Proposed Writ (pm) [Entry date 07/27/00]
7/28/00	120	ORDER by Chief Judge Thomas I. Vanaskie THAT: The evidentiary hearing previously scheduled for Tuesday, August 1, 2000 at 10:00 a.m. has been rescheduled to Thursday, August 10, 2000 at 1:00 p.m.; Evidentiary hearing 1:00 8/10/00 (cc: all counsel court, faxed) (ta) [Entry date 07/28/00]
8/1/00	121	WRIT OF HABEAS CORPUS AD TESTIFICANDUM by Chief Judge Thomas I. Vanaskie ordering the Warden

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or to the US MARSHAL to produce Edward R. Coss, Jr. to Middle District Court of PA, Scranton August 10, 2000 at 1:00 pm (cc: 3 cert copies to US Marshal, cr, all counsel, warden) (sm) [Entry date 08/01/00] [Edit date 08/01/00]

8/9/00	122	RESPONSE by respondent Lackawanna County District Atty to Deft's petition for release (sm) [Entry date 08/10/00]
8/11/00	123	MINUTE SHEET of Evidentiary Hearing held on 8/10/00 at 10:30 a.m. before Judge Vanaskie. CTR: Janes (ao) [Entry date 08/11/00]
8/11/00	124	EXHIBIT LIST submitted by respondents. (sm) [Entry date 08/14/00]
8/23/00	125	MEMORANDUM AND ORDER: by Chief Judge Thomas I. Vanaskie denying petition motion for release and to schedule evidentiary hearing [114-1], denying petition [114-2] (cc: all counsel court) (ps) [Entry date 08/23/00]
8/23/00	126	EXHIBIT LIST by respondent Lackawanna County Di, respondent PA Attorney General (sm) [Entry date 08/28/00]
8/29/00	127	NOTICE by petitioner Edward R. Coss Jr. OF CHANGE OF ADDRESS to Graterford PA. (sm) [Entry date 08/29/00]

APPENDIX B — COURT OF APPEALS DOCKET ENTRIES

GENERAL DOCKET FOR
Third Circuit Court of Appeals

Court of Appeals Docket #: 98-7416 Filed: 7/31/98
Nsuit: 3530 Prisoner: Habeas Corpus
Coss v. Dist Atty Lackawanna, et al
Appeal from: U.S. District Court for the Middle District of Pennsylvania

* * *

EDWARD R. COSS #CB-5970, JR.

Appellant

v.

DIST ATTY LACKAWANNA;
PA ATTY GEN OFFICE

Appellees

ATTY GEN

Amicus-appellee

7/31/98	CIVIL CASE DOCKETED. Notice by Edward R. Coss, filed. (lal)
7/31/98	ORDER appointing FPD to represent Appellant, filed. (lal)

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7/31/98	BRIEFING NOTICE ISSUED. Appellant brief and appendix due 9/9/98. (lal)
8/7/98	APPEARANCE from Attorney Daniel I. Siegel on behalf of Appellant Edward R. Coss, filed. (lal)
8/10/98	DISCLOSURE STATEMENT on behalf of Appellant Edward R. Coss, filed. (lal)
8/10/98	INFORMATION STATEMENT on behalf of Appellant Edward R. Coss, received. (lal)
8/10/98	TRANSCRIPT PURCHASE ORDER (Part I), already on file in the District Court Clerk's Office, filed. (lal)
8/12/98	CERTIFIED LIST filed. (lal)
8/24/98	FOLLOW UP LETTER to William P. O'Malley, Michael J. Barrasse and Melinda C. Ghilardi requesting the following documents: **Appearance Form (lal)
9/9/98	BRIEF on behalf of Appellant, Pages: 12, Copies: 10, Delivered by mail, filed. Certificate of service date 9/9/98. (lmp)
9/9/98	APPENDIX on behalf of Appellant, Copies: 4 Volumes: 1, Delivered by mail, filed. Certificate of service date 9/9/98. (lmp)

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12/9/98 APPEARANCE from Attorney William P. O'Malley on behalf of Appellees Dist Atty Lackawanna and PA Atty Gen Office, filed. (lal)

12/9/98 BRIEF on behalf of Appellees Dist Atty Lackawanna and PA Atty Gen Office, Pages: 7, Copies: 10, Delivered by mail, filed. Certificate of Service date 10/8/98. (lal)

1/12/99 CALENDARED for Monday, March 1, 1999, (Rescheduled from Tuesday, March 2, 1999). (pl)

2/24/99 LETTER dated 2/23/99 received pursuant to Rule 28(j) from counsel for Appellant Edward R. Coss. (lc)

3/1/99 ARGUED Monday, March 1, 1999 Panel: Stapleton, Rendell, Aldisert, Circuit Judges. (pl)

3/26/99 CLERK'S LETTER to counsel written at the direction of Court requesting the parties to provide the court with a copy of the transcript of the evidentiary hearing held in connection with appellant's ineffective assistance of counsel claim and the associated exhibits, including the police report to the incident at issue. Response due by 4/5/99. (cg)

4/5/99 ANSWER received in accordance with the Court's request from Appellant Edward R. Coss #CB-5970, filed. (cg)

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6/10/99 ANSWER received in accordance with the Court's request from Appellant Edward R. Coss #CB-5970, REC'D ONLY. (cg)

6/28/99 PUBLISHED OPINION (Stapleton, Rendell, Authoring Judge, Aldisert, Circuit Judges), filed. Total Pages: 33. VACATED — SEE COURT ORDER DATED 7/30/99 (clc)

6/28/99 JUDGMENT reversed and the cause is remanded to the said District Court with instruction that it order a writ of habeas corpus to issue conditioned upon Mr. Coss being resentenced withou: consideration of the previous assault conviction. Costs taxed against the appellees, filed. ZZ#VACATED ZZ# — ZZSee ZZ#Court ZZ#Order ZZ#Dated ZZ#7/30/99. (clc)

7/12/99 MOTION by Appellees Dist Atty Lackawanna and PA Atty Gen Office for extension of time to file petition for rehearing, filed. Answer due 7/22/99. Certificate of Service dated 7/9/99. (lc)

7/15/99 ORDER (Clerk) granting motion for extension of time to petition for rehearing by Appellees Dist Atty Lackawanna and PA Atty Gen Office. The petition for rehearing shall be filed on or before July 26, 1999, filed. (lc)

7/26/99 PETITION by Appellees for rehearing en banc. Certificate of service dated 7/26/99, filed. (lc)

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7/30/99 ORDER filed (Coram: Chief Judge Becker, Authoring Judge, Sloviter, Mansmann, Greenberg, Scirica, Nygaard, Alito, Roth, McKee, Rendell, Aldisert, Stapleton, Circuit Judges) granting petition for en banc rehearing by Appellees Dist Atty Lackawanna and PA Attorney General and ordering the Clerk of this Court to vacate the opinion filed June 28, 1999 and list the above for rehearing en banc at the convenience of the Court, filed. (lc)

8/2/99 CALENDARED for Rehearing En Banc on Monday, November 8, 1999. (wab)

8/4/99 SUPPLEMENTAL APPENDIX on behalf of Edward R. Coss. Copies: 14 Volumes: 1 Delivered by mail, received. Certificate of service date 8/3/99. (Received for the information of the court only.) (lrb)

8/5/99 MOTION by Appellees Dist Atty Lackawanna and PA Atty Gen Office to file amended brief for in banc rehearing, filed. Answer due 8/17/99. Certificate of Service dated 8/4/99. (lc)

8/6/99 RESPONSE in Concurrence by Appellant Edward R. Coss to Appellees' motion to file amended briefs, filed. Certificate of service dated 8/5/99. (lc)

8/9/99 Notice of telephone request. Requested additional copied of the appellees' amended brief. Response due in 3 days. (lrb)

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8/27/99 ORDER (Chief Judge Becker, Authoring Judge, Sloviter, Mansmann, Greenberg, Scirica, Nygaard, Alito, Roth, McKee, Rendell, Aldisert, Stapleton, Circuit Judges) granting motion by Appellees DA Lackawanna and PA Atty Gen Office to file amended briefs. The parties are granted leave to file supplemental briefs addressing the subject of the scope of relief that might be afforded to appellant. The Attorney General of Pennsylvania is invited to file a brief amicus curiae. The Court will entertain a single amicus brief in support of the position of the appellant. Appellant's brief shall be filed within three weeks. Briefs on behalf of appellee shall be filed within two weeks thereafter. Appellant may file a reply brief within one week after service of appellee's brief, filed. (lc)

9/17/99 SUPPLEMENTAL BRIEF on behalf of Edward R. Coss #CB-5970. Pages: 7 Copies: 14, Delivered by mail, filed. Certificate of service date 9/17/99. (wab)

10/4/99 SUPPLEMENTAL BRIEF on behalf of Dist Atty Lackawanna, PA Atty Gen Office. Pages: 18, Copies: 14, Delivered by mail, filed. Certificate of service date 10/4/99. (gas)

10/4/99 AMICUS BRIEF on behalf of Atty Gen. Pages: 9, Delivered by mail, filed. Certificate of service date 10/4/99. (gas)

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11/8/99 ARGUED Rehearing En Banc on Monday, November 8, 1999 Panel: Becker, Chief Judge, Sloviter, Mansmann, Greenberg, Scirica, Nygaard, Alito, Roth, McKee, Rendell, Barry, Aldisert, and Stapleton, Circuit Judges. (cg)

2/29/00 PUBLISHED OPINION (Becker, Chief Judge, Sloviter, Mansmann, Greenberg, Scirica, Nygaard, Alito, Roth, McKee, Rendell, Barry, Aldisert, Authoring Judge, Stapleton, Circuit Judges). Judges Nygaard and Roth, Dissenting. Judges Rendell and McKee, Concurring and Dissenting, filed. (lc)

2/29/00 JUDGMENT, Reversed and the cause is remanded to the District Court with direction to issue a writ of habeas corpus conditional on the Commonwealth's option of conducting a new trial and if the new trial produces a verdict different from the prior verdict, the state must resentence Mr. Coss to account for any enhancement due to this guilty verdict or the Commonwealth has the option of proceeding into resentencing on the 1990 conviction. Costs taxed against appellees, filed. (lc)

3/22/00 MANDATE ISSUED, filed. (lc)

3/22/00 RECORD released. (lc)

4/19/00 REPORTER at 204 F.3d 453 (3d Cir. 2000) (vkl)

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5/30/00 Supreme Court of U.S. notice filed advising petition for writ of certiorari filed by Appellees Dist Atty Lackawanna and PA Atty Gen Office. Filed in the Supreme Court on 5/24/00 at Supreme Ct. case number: 99-1884. (lc)

6/26/00 Respondent's brief in opposition to petition for writ of certiorari together with application to proceed in forma pauperis, received for the information of the Court. (lc)

10/13/00 U.S. Supreme Court order dated 10/10/00 at S.C. number: 99-1884, granting petition for writ of certiorari by Appellees Dist Atty Lackawanna and PA Atty Gen Office and granting motion by Respondent for leave to proceed in forma pauperis, filed. (lc)

10/24/00 MOTION by Appellant Edward R. Coss for modification of record and that the document attached to the motion be certified and made part of the record, filed. Answer due 11/6/00. Certificate of Service dated 10/23/00. (lc)

11/6/00 ORDER (Chief Judge Becker, Authoring Judge) granting motion by Appellant Edward R. Coss, Jr. for modification of record and that the attached document be certified and made part of the record, filed. (lc)

APPENDIX C — CRIMINAL INFORMATION FILED JULY 17, 1986, IN LACKAWANNA COUNTY CRIMINAL CASE NOS. 645(a), (d) AND (e) OF 1986

86 Cr. 645(a)

COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD COSS

Counts

1) THE DISTRICT ATTORNEY of Lackawanna County by this information charges that, on (or about) June 26, 1986 in said County, Edward Coss did knowingly desecrate, vandalize, deface and other damage a juvenile detention center, in that the said Edward Coss did smash a window and window screen, did pull off of the wall a sink and commode and smashed them, did smash a light fixture, did damage the cell door, and did tear out the radiator and the pipe for the heat in the cell, in the Lackawanna County Detention Facility, situated at 313 Monroe Avenue, in the City of Scranton, the property of the County of Lackawanna, causing pecuniary loss in excess of $1,000.00.

INSTITUTIONAL VANDALISM.
(18 C.P.S.A. Sec. 3307(a-3) (M-2)

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2) And the District Attorney of Lackawanna County by this information further charges that on or about June 26, 1986 in said County, Edward Coss unlawfully did intentionally and recklessly damage certain tangible property, to wit: smash an outside window and screen, did pull off of the wall a sink and commode and smash them, did smash a light fixture, did damage a cell door, and did tear out the radiator and the pipe for heat in the cell at the Lackawanna County Detention Facility, the property of the County of Lackawanna, causing pecuniary loss in the amount in excess of $1,000.00.

CRIMINAL MISCHIEF
18 C.P.S.A. Sec. 3304(2) (M-2)

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

s/ [illegible]
District Attorney

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IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

86 Cr. 645(d)

COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD COSS

Counts

1) THE DISTRICT ATTORNEY of Lackawanna County by this information charges that, on (or about) June 25, 1986 in said County, Edward Coss did attempt to cause and did intentionally and knowingly cause serious bodily injury to Patrolman Anthony Adamitis of the Dickson City Policy Department, and did attempt to cause and did intentionally and knowingly cause bodily injury to the said patrolman who was making and attempting to make a lawful arrest of the said Edward Coss for the crime of Disorderly Conduct, in that the said Edward Coss did punch the said patrolman in the left side of the face with a closed fist causing the said patrolman's left eye to swell and also causing the said patrolman's eye glasses to break, while the said patrolman was attempting to make a lawful arrest of the said Edward Coss.

AGGRAVATED ASSAULT.
(18 C.P.S.A. Sec. 2702(2)(3) (F-2)

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2) And the District Attorney of Lackawanna County by this information further charges that on or about June 25, 1986 in said County, Edward Coss with the intent of preventing Patrolman Anthony Adamitis of the Dickson City Police, a public servant, from effecting a lawful arrest and discharging another duty, unlawfully did create a substantial risk of bodily injury to the said public servant, and did employ means justifying and requiring substantial force to overcome the resistance.

RESISTING ARREST
(18 C.P.S.A. Sec. 5104) (M-2)

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

s/ [illegible]
District Attorney

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IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

86 Cr. 645(e)

COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD COSS

Counts

1) THE DISTRICT ATTORNEY of Lackawanna County by this information charges that, on (or about) June 25, 1986 in said County, Edward Coss unlawfully did knowingly and intentionally threaten to commit a crime of violence with the intent to terrorize another, in that the said Edward Coss did threaten Patrolmen Anthony Adamitis and Andrew Wrobel, with the crime of Murder, & Assault, with the intent to terrorize them in reckless disregard of the risk of causing such terror and inconvenience.

TERRORISTIC THREATS
(18 C.P.S.A. Sec. 2706) (M-1)

2) And the District Attorney of Lackawanna County by this information further charges that on or about June 25, 1986 in said County, Edward Coss with intent to cause public inconvenience, annoyance and alarm, unlawfully did persist in fighting and

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threatening and in violent and tumultuous behavior and did make unreasonable noise and did use obscene language and did create a hazardous and physically offensive condition by any act which served no legitimate purpose of the actor after reasonable warning and request to desist.

DISORDERLY CONDUCT.
(18 C.P.S.A. Sec. 5503(a-1-2-3-4) (M-3)

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

s/ [illegible]
District Attorney

APPENDIX D — DOCKET SHEET IN LACKAWANNA COUNTY CRIMINAL CASE NO. 645 OF 1986

1. CASE NO. 86-cr-645

* * *

3. LAST NAME Coss

4. FIRST NAME Edward

* * *

DATE	ACTIONS, JUDGMENT AND CASE NOTES
7-7-86	Filed Order and Order of Court, Penetar, Judge.
7-9-86	Filed Amended Order. By the Court, Penetar, Judge.
7-21-86	Filed Petition for reduction of Bail
7-22-86	Filed REQUEST FOR BILL OF PARTICULARS
7-22-86	Filed REQUEST FOR PRETRIAL DISCOVERY & INSPECTION.
7-25-86	Filed Answer to Petition for Reduction of Bail.
7-29-86	Filed Commonwealth's Answer to Request for Pretrial Discovery and Inspection.

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7-29-86	Filed Commonwealth's Response to request for Bill of Particulars
7-29-86	Filed Order. By the Court, Munley, J
7-31-86	Defendant and Robert Helrig each tent in $1000.00
8-1-86	Filed OMNIBUS PRE TRIAL MOTION. RULE
8-6-86	Filed ANSWER TO OMNIBUS PRE TRIAL MOTION
10-31-86	Now Oct. 30, 1986 issue joined, jurors called and sworn in according to the Law, say on same day defense demurrers to charge of Agg. Assault and Terroristic threats, demurrer is sustained. Say on Oct. 31, 1986 they find defendant to charges of Institutional Vandalism, Criminal Mischief and Simple Assault Guilty. To charges of Resisting Arrest and Disorderly Conduct they find defendant Not Guilty. Sentence deferred pending pre sentence investigation. By the Court, Cottone, J.
12-12-86	Filed PETITION TO REVOKE BAIL. RULE
12-31-86	Filed Order. (Revocation of Bail). Munley, J.
1-30-87	Defendant Sentenced to pay costs of prosecution and to serve a min of six Months to a max of one

year on charge of Inst. Vandalism and on simple assault a min of 6 months to a max of 1 year consecutive at a State Corr. Facility.

Cottone, J.

1-30-87 Filed MOTION TO DISMISS UNDER RULE 1100 ORDER. By the Court

2-2-87 Filed PROCEEDINGS AT SENTENCE (Cottone, D. Walsh)

2-3-87 Filed Motion for reconsideration of sentence.

2-9-87 Filed Commonwealth's Answer to Motion to Dismiss Under Rule 1100.

3-2-87 Filed Order. By the Court, (Reschedule hearing on Motion).

3-13-87 Filed Order. By the Court, Cottone, (Petition denied).

3-12-87 Filed Motion for Modification of Sentence Nunc Pro Tunc.

4-3-87 FILED PETITION FOR CREDIT FOR IMPRISONMENT

4-6-87 Filed Order Dismissing petition for credit.

6-10-87 Filed Application for Order Mandating Clerk of Courts to furnish court records.

1-12-87 Filed PETITION UNDER POST CONVICTION HEARING ACT

6-23-87 Filed ORDER — pro se application is DENIED By the Court, Cottone, J

6-29-87 Filed Commonwealth's Answer to Petition Under Post Conviction Hearing Act.

7-12-94 Filed Application for order mandating Clerk of Courts and stenographer to furnish court records and Transcribed Notes of testimony

APPENDIX E — STATE POST-CONVICTION PETITION DATED JUNE 8, 1987, AND FILED JUNE 12, 1987

PETITION UNDER POST CONVICTION HEARING ACT

COMMONWEALTH OF PENNSYLVANIA

VS

EDWARD R. COSS JR.

* * *

INFORMATION OR INDICTMENT NUMBERS:
CR# 645 Count (1) 1986
CR# 645 Count (2) 1986

I WAS CHARGED WITH THE FOLLOWING CRIMES:
(1) ct. Simple Assault
(2) ct. Institutional Vandalism

1. MY NAME IS: Edward R. Coss Jr.

2. I AM NOW

* * *

(C) ☒ Confined in Rockview State Corr. Inst., Bellefonte, Pa.

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3. I WAS SENTENCED ON January 30, 1987, TO A TOTAL TERM OF (1) to (2) years, COMMENCING ON January 1, 1987, FOLLOWING A

☒ Trial by jury

* * *

4. I AM ELIGIBLE FOR RELIEF BECAUSE OF:

* * *

☒ The infringement of my privilege against self-incrimination under either federal or state law

☒ The denial of my constitutional right to representation by a competent lawyer

* * *

☒ The obstruction by state officials of petitioner's right of appeal

* * *

☒ The abridgement of a right guaranteed by the constitution or laws of this state or the constitution or laws of the United States, including a right that was not recognized as existing at the time of trial if the constitution requires retrospective application of that right

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☒ The unavailability at the time of trial of exculpatory evidence that has subsequently become available and that would have affected the outcome of the trial if it had been introduced

☒ The denial of my right to appeal through failure to inform me of this right

5. THE FACTS IN SUPPORT OF THE ALLEGED ERROR(S) UPON WHICH THIS PETITION IS BASED ARE AS FOLLOWS: (State facts clearly and fully; argument, citations, or discussions of authorities shall not be included.)

(A) I know the following facts to be true of my own personal knowledge:

(1). Counsel was ineffective for failure to essentially subpoena witnesses, which could have exonerated the petitioner, or favorably affected the petitioner's defense efforts at vindication. (2). Counsel was ineffective for failure to present a defense of self-defense, when in fact, Counsel "Knew" that the petitioner, had been struck on the head by the affiant, and was in reasonable fear of imminent bodily harm. (3). Counsel was ineffective for failure to allow petitioner to assist in selecting the jury on Voir Dire, thereby, depriving petitioner of his right to a fair and impartial tribunal. (4). Counsel was unconscionably negligent, in failing to advise the petitioner of his 5th amendment right "not to testify" thereby incriminating himself, without, conducting

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a Bighum Colloquy, to assure that commonwealth could not impeach the credibility through prior record.

(B) The following facts were made known to me by means other than my own personal knowledge (Explain how and by whom you are informed):

(6). Trial Court attempted to impede and hamper petitioner's right to appeal, by threats and coercive implications, of threatened bail revocation, if petitioner elected to exercise his right to appeal. (intentional coercive abridgement) (7). Petitioner subjected to the imposition of an illegal sentence, in that trial court relied on impermissible considerations, and used Juvenile record.

(C) In the event my appeal is allowed as requested under #4, the following are the matters which I intend to assert on that appeal (Specify the matters to be asserted if appeal is allowed)

(all of the above) Constitutional violations of the 5th, 6th, and 14th amendments, as well as Article 1 & 9 of the Pa. Const.

6. SUPPORTING EXHIBITS

* * *

(B) I have not attached any affidavits, records or other supporting evidence because I have not received

Appendix E

the transcripts from my trial/ prior criminal record was used and applied in sentence illicity. Pre-sentence investigation report/ unavailable to petitioner.

7. I HAVE TAKEN THE FOLLOWING ACTION(S) TO SECURE RELIEF FROM MY CONVICTION(S) OR SENTENCE(S):

(A) Direct Appeal

☐ YES ☒ NO

No collateral appeals or appellate relief sought

(B) Previous proceedings in the courts of the Commonwealth of Pennsylvania

☐ YES ☒ NO

N/A

(C) Habeas Corpus or other petitions in Federal Courts

☐ YES ☒ NO

Not applicable

(D) Other legal proceedings

☐ YES ☒ NO

None Criminal/Civil Rights Action pursuant to U.S.C. Title 42/ 1983

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8. FOLLOWING MY ARREST, I WAS REPRESENTED BY THE FOLLOWING LAWYER(S): (Give the lawyer's name and the proceeding at which he represented you.)

Mrs. Roseann McGowan — Lackawanna Public Defender's Office
Represented at Trial by Jury/ Sentencing.

9. THE ISSUES WHICH I HAVE RAISED IN THIS PETITION HAVE NOT BEEN FINALLY LITIGATED OR WAIVED BECAUSE: (State facts.)

Petitioner's allegations are of a Constitutional dimension and consist of intimations by petitioner of procedural due process improprieties, which mandate amelioration and remedy. Hampered/ and deprivational impediments to appellate rights. Constitutional infringement inuring substantial harm and prejudice to petitioner are/ never waived, and are preserved for appellate review in light of the fact that counsel filed no post-verdict motions for defendant, and failed to appeal the case.

10. BECAUSE OF THE FOREGOING REASONS, THE RELIEF WHICH I DESIRE IS:

* * *

(B) ☒ A new trial

(C) ☒ Correction of sentence

(D) ☒ Other relief (specify): evidentiary hearing on the allegations of the ineffective assistance of Counsel issue.

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11. (A) I am . . . ☒ NOT ABLE to pay the costs of this proceeding

* * *

(B) My other financial resources are: No pecuniary assets or substantial assets of any kind.

12. (A) ☒ I do not have a lawyer and I am without financial resources or otherwise unable to obtain a lawyer.

(1) ☒ I request the court to appoint a lawyer to represent me. Court appointed / other than public Defender's office

* * *

s/ Edward R. Coss Jr.
(Signature of Petitioner)

* * * *

APPENDIX F — LACKAWANNA COUNTY COURT ORDER DATED JUNE 23, 1987, APPOINTING COUNSEL AND GRANTING RULE TO SHOW CAUSE

Criminal Action No. 86 of 645

COMMONWEALTH OF PENNSYLVANIA

VS

EDWARD R. COSS JR.

ORDER

AND NOW this 23rd day of June, 1987 Upon consideration of the foregoing petition:

* * *

2. ☒ A rule is granted upon the Commonwealth of Pennsylvania to show cause why a hearing should not be granted. The rule is returnable on or before JULY 31, 1987.

3. ☒ The request to proceed as a poor person, without the payment of costs, is ☒ granted.

4. ☒ Upon finding that petitioner is unable to obtain a lawyer Terrence Gallagher, Esq., Jefferson Professional Bldg., 416 Jefferson Ave., Scranton, Pennsylvania, 18510, is appointed to represent him.

5. ☒ The Clerk of this Court is ordered and directed to do the following forthwith:

Appendix F

(a) To serve a copy of this petition and this order upon the District Attorney of Lackawanna County.

(b) To send a copy of this petition and this order to Terrence Gallagher, Esq., the lawyer for the petitioner.

(c) To send a copy of this order to the petitioner.

(d) To send a copy of this petition and order to Roseanne McGowan, Esq. Public Defender's Office.

* * *

BY THE COURT

s/ Cottone, J.

APPENDIX G — COMMONWEALTH'S ANSWER TO STATE POST-CONVICTION PETITION, FILED JUNE 29, 1987

IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

86 Cr. 645

COMMONWEALTH OF PENNSYLVANIA

Vs.

EDWARD R. COSS JR.

COMMONWEALTH'S ANSWER TO PETITION
UNDER POST CONVICTION HEARING ACT

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

NOW, Comes the Commonwealth by and through Assistant District Attorney, Andrew J. Jarbola and answers defendant's motion as follows:

1. Admitted

2. Admitted

3. Admitted

4. Denied

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5. A. (1) Denied
   (2) Denied
   (3) Denied
   (4) Denied

   B. (6) Denied
   (7) Denied

   C. Denied

6. No answer required

7. A. Admitted
   B. No answer required
   C. No answer required
   D. No answer required

8. Admitted

9. Denied

10. Denied

11. The Commonwealth is unable to confirm or deny this averment.

12. No answer required.

Respectfully Submitted,

s/ Andrew J. Jarbola
ANDREW J. JARBOLA
Assistant District Attorney

APPENDIX H — PENNSYLVANIA SUPERIOR COURT OPINION FILED JUNE 9, 1997, IN LACKAWANNA COUNTY CRIMINAL CASE NO. 1371 OF 1989

Published at *Commonwealth v. Coss*, __ Pa. Super. __, 695 A.2d 831 (1997).

SUPERIOR COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

EDWARD COSS, JR.,

Appellant.

Submitted March 3, 1997.
Filed June 9, 1997.

* * *

Before McEWEN, P.J., and SCHILLER and OLSZEWSKI, JJ.

SCHILLER, Judge.

Appellant, Edward Coss, Jr., appeals from the judgment of sentence entered by the Court of Common Pleas of Lackawanna County following his conviction of one count each of aggravated assault[1] and simple assault.[2] We affirm.

---

1. 18 Pa.C.S. § 2702.

2. 18 Pa.C.S. § 2701.

Appendix H

FACTS:

On September 11, 1990, following a jury trial, appellant was convicted of the crimes described above. These crimes stem from the beating of Peter Petrovich on August 30, 1989, by a group of five or six men, including appellant. After a trial by jury and his conviction, appellant was sentenced to a term of imprisonment of six to twelve years on the aggravated assault conviction, which was within the standard range of the Pennsylvania Sentencing Guidelines.[3] On direct appeal, this Court vacated the sentence because it was not clear that the presentence report was accurate; concurrently, we remanded the case for resentencing. Commonwealth v. Coss, 449 Pa.Super. 718, 674 A.2d 313 (Memorandum decision, No. 00962 Philadelphia 1995, December 13, 1995). Prior to resentencing, appellant challenged the determination of his prior record and offense gravity scores. The trial court determined that the offense gravity score for the aggravated assault conviction would remain the same at 9, using the sentencing guidelines in effect at the time appellant committed this crime, but reduced the prior record score from 3 to 2, agreeing with appellant that his three prior misdemeanors convictions all arose from the same action, and did not count separately against his prior record, pursuant to 204 Pa.Code 303.7(b), 42 Pa.C.S. § 9721. Thereafter, the trial court resentenced appellant to the same sentence, i.e. six to twelve years imprisonment; this was still within the standard range of the sentencing guidelines. This appeal followed.

---

3. The simple assault conviction merged for purposes of sentencing.

Appendix H

DISCUSSION:

Appellant now raises several issues concerning the correctness of his sentence: (1) whether the trial court abused its discretion in sentencing appellant to six to twelve years imprisonment; (2) whether the trial court failed to state on the record its reasons for the sentence and for total confinement; (3) whether the trial court erred in computing the offense gravity score; and (4) whether the trial court erred in computing the prior record score.

Regarding his first issue, appellant does not have an appeal as of right from the discretionary aspects of his sentence. 42 Pa.C.S. § 9781(b); Commonwealth v. Scullin, 414 Pa.Super. 442, 446-47, 607 A.2d 750, 752 (1992), alloc. denied 533 Pa. 633, 621 A.2d 579 (1992). Two requirements must be met before appellant's challenge to the judgment of sentence will be heard on the merits. Commonwealth v. Koren, 435 Pa.Super. 499, 503, 646 A.2d 1205, 1207 (1994). First appellant must "set forth in his brief a concise statement of reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence." Pa.R.A.P. 2119(f), Id. Second, the appellant must show "that there is a substantial question that the sentence imposed is not appropriate under this chapter." 42 Pa.C.S. § 9781(b); Commonwealth v. Tuladziecki, 513 Pa. 508, 513, 522 A.2d 17, 20 (1987), Commonwealth v. Urrutia, 439 Pa.Super. 227, 236, 653 A.2d 706, 710, alloc. denied 541 Pa. 625, 661 A.2d 873 (1995). This Court has held that a claim of excessiveness of sentence does not raise a substantial question where the sentence is within the statutory limits. Commonwealth v. Jones, 418 Pa.Super. 93, 106, 613 A.2d 587, 593 (1992), alloc. denied 535 Pa. 615, 629 A.2d 1377 (1993) (en banc).

We note that appellant has set forth in his brief a concise statement pursuant to Pa.R.A.P. 2119(f). However, appellant has not raised a substantial question that the sentence imposed was inappropriate, because the sentence imposed was within the statutory recommendation. The guidelines in effect at the time appellant was convicted suggested a minimum sentence of 48-72 months where the offense gravity score is 9 and the prior record score is 2. Appellant was sentenced to 72-144 months, which, as appellant acknowledges, was within the applicable range. Appellant argues that the trial court abused its discretion by sentencing him to the highest sentence possible under the standard range. Such an argument does not raise a substantial question under Commonwealth v. Tuladziecki, supra, and therefore appellant's argument is not cognizable.

Appellant's next issue is that the trial court failed to adequately explain its reasons on the record for the sentence and for the imposition of total confinement. This issue is reviewable:

> Although a claim that the trial court failed to provide reasons for its sentence technically involves the discretionary aspects of sentencing, see Commonwealth v. Smicklo, 375 Pa.Super. 448, 544 A.2d 1005 (1988) (en banc), the trial court has no discretion in determining whether or not to place such reasons on the record. Rather, the Sentencing Code provides, in pertinent part, that "[i]n every case in which the court imposes a sentence for a felony or misdemeanor, the court shall make as a part of the record, and disclose in

> open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed." 42 Pa.C.S. § 9721(b).

Commonwealth v. Egan, 451 Pa.Super. 219, 224, 679 A.2d 237, 239 (1996).

Thus, a trial court is required to state its reasons for the sentence on the record. 42 Pa.C.S. § 9721(b). This requirement can be satisfied by the trial court indicating, on the record, that it has been informed by a presentence report. Commonwealth v. Devers, 519 Pa. 88, 546 A.2d 12 (1988). A failure to provide the reasons for the sentence imposed constitutes reversible error requiring resentencing. Commonwealth v. Egan, supra. In addition, 42 Pa.C.S. § 9725 requires the trial court to state its reasons for imposing a sentence of total confinement:

> The court shall impose a sentence of total confinement if, having regard to the nature and circumstances of the crime and the history, character, and condition of the defendant, it is of the opinion that the total confinement of the defendant is necessary because:
>
> (1) there is undue risk that during a period of probation or partial confinement the defendant will commit another crime;
>
> (2) the defendant is in need of correctional treatment that can be

> provided most effectively by his commitment to an institution; or
>
> (3) a lesser sentence will depreciate the seriousness of the crime of the defendant.

42 Pa.C.S. § 9725. See Commonwealth v. Mullen, 321 Pa.Super. 19, 467 A.2d 871 (1983).

In resentencing appellant after the remand, the trial court stated:

> Mr. Coss, in passing sentence on you I've taken into consideration the presentence investigation report . . . I've taken into consideration the statements by Mr. Gertz [appellant's attorney] and the seriousness and nature of the crime involved here, the well being and protection of the people who live in our community, your criminal disposition, your prior criminal record, the possibility of your rehabilitation, and the testimony that I've heard. I was the trial judge and I take into consideration the testimony from the trial.
>
> I think that it's indicative that from your actions that you will continue to break the law unless given a period of incarceration. The record also reflects that shortly after — I think seven of eight months after being discharged from state parole supervision that you committed this offense, and therefore you failed to take advantage of the

> programs and rehabilitation programs that you have been involved in. And the recommendation falls within the standard range of the sentencing guidelines and I find no reason to reduce the defendant's sentence.

N.T., March 27, 1996, pp. 27-29. It is clear from this statement that the trial court stated sufficient reasons for its sentence on the record, including that it relied on a presentence report, and that it considered total confinement necessary because there was a likelihood that appellant would commit another crime if not imprisoned. As such, appellant's argument is meritless.

Appellant's third issue is that the trial court erred in computing the offense gravity score for the aggravated assault crime. Using the sentencing guidelines in effect for this conviction, the trial court determined that the aggravated assault conviction carried an offense gravity score of 9 because serious bodily injury was caused. Appellant argues that he was convicted of only attempting to cause serious bodily injury, which carried with it an offense gravity score of 8.

The Commonwealth argues that this issue, and the next one regarding computation of a prior record score, go to the discretionary aspects of appellant's sentence, and hence are not reviewable as a matter of right. We disagree. "Calculation of a prior record score or an offense gravity score are not matters within the trial court's discretion. Therefore, neither [42 Pa.C.S.] § 9781 nor [Pa.R.A.P.] 2119(f) are implicated in this issue on appeal." Commonwealth v.

Johnson, 421 Pa.Super. 433, 440, 618 A.2d 415, 418-19 (1992). "[W]here the issue on appeal is the improper calculation of a prior record score or an offense gravity score, a direct appeal lies because these are legal questions, and a discretionary review is not appropriate." Id. at 440, 618 A.2d at 419. Therefore, appellant has an appeal as of right to raise these issues.

At trial, appellant was tried and convicted of aggravated assault under subsection (1) of the statute, which provides:

> (a) Offense defined. A person is guilty of aggravated assault if he:
>
> > (1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life

18 Pa.C.S. § 2702(a)(1). At sentencing, the trial court rejected appellant's argument that he was convicted of attempting to cause serious bodily injury, as opposed to causing serious bodily injury, stating, "The evidence at the trial — and I was the trial judge on this — is that the victim in this case, Petrovich, suffered bodily injury, serious bodily injury." N.T., March 27, 1996, p. 6. This finding of fact was supported by the evidence produced at trial, which showed that the victim had to undergo plastic surgery as a result of the assault by appellant. See generally Commonwealth v. Caterino, 451 Pa.Super. 42, 678 A.2d 389, alloc. denied, 546 Pa. 652, 684 A.2d 555 (1996). As a result, the trial court's finding that

appellant was convicted of aggravated assault for causing serious bodily injury was supported by the evidence, and, therefore, the trial court did not err in using an offense gravity score of 9 in sentencing appellant.

Appellant's last issue is that the trial court erred in computing his prior record score. The court determined that appellant's prior record score was 2 based on his previous adjudication of delinquency. The Sentencing Guidelines provide for the use of a prior juvenile adjudication of delinquency if "there was an express finding by the juvenile court that the adjudication was for a felony." 204 Pa.Code § 303.5, 42 Pa.C.S. § 9721. If there is such a finding, the juvenile offense is given a prior record score of 2. 204 Pa.Code § 303.6, 42 Pa.C.S. § 9721. Appellant argues that here there was no express finding that this adjudication of delinquency resulted from the conviction for a felony, and therefore his prior record score should have been 0.

In Commonwealth v. Bivens, 337 Pa.Super. 216, 486 A.2d 984 (1985), this Court in interpreting this section stated:

> In our opinion, the Sentencing Commission, when drafting the Guidelines, meant for juvenile adjudications not to be counted in sentencing unless there was no doubt that the juvenile had been adjudicated delinquent for a specific offense that would be a felony if committed by an adult. Otherwise, the juvenile adjudication may be counted against the adult defendant unfairly.

Id. at 220, 486 A.2d at 986. The obvious intent of the Sentencing Guidelines and this Court's holding in Bivens is

that a juvenile adjudication of delinquency should not be counted unless a felony was specifically found to have been committed. In other words, in a situation where a general adjudication was rendered and it may be unclear to a reviewing court whether the trial court actually found that the juvenile had committed a felony as opposed to related misdemeanors, the ambiguity created is construed in favor of the defendant offender. However, this ambiguity does not exist in a situation like the present, where the defendant specifically pleads guilty to the felony. Such a plea obviates the need for the juvenile court to make an express finding.

Appellant was adjudicated delinquent in 1985, after he pled guilty to multiple charges which included a charge of burglary. The learned and well respected trial judge in this case, the Honorable James M. Munley, held that this was a sufficient basis to conclude that appellant was adjudicated delinquent specifically based on the burglary charge. It is clear from the record of the juvenile adjudication[4] that appellant was aware that he was pleading guilty to burglary.[5] Thus, the record is clear that appellant knowingly admitted the commission of a felony before the juvenile court and

---

4. We note that the official record in this case was lost and that our review is based on a reconstructed record supplied by the trial court. Nowhere in that record is there any of the proceedings from the juvenile adjudication, which occurred on October 18, 1985. Instead, our review is based on the transcript of the juvenile hearing supplied by appellant in his reproduced record, which the Commonwealth does not allege is inaccurate.

5. We note that every type of burglary set forth in 18 Pa.C.S. § 3502 constitutes a felony.

that his adjudication of delinquency was based, at least in part, on the commission of a felony. As such, the trial court did not err in finding that appellant was adjudicated delinquent because of a felony, and appellant's argument that his prior record score should be 0 instead of 2 is meritless.

CONCLUSION:

Appellant's argument that the trial court abused its discretion in sentencing him to 6 to 12 years imprisonment does not raise a substantial question regarding his sentence and is not cognizable on this appeal. The trial court did not fail to state sufficient reasons for its sentence and for ordering total confinement. The trial court also did not err in computing the offense gravity score for the aggravated assault conviction, or in computing appellant's prior record score.

Consequently, the judgment of sentence entered by the Court of Common Pleas of Lackawanna County is affirmed.

APPENDIX I — SECOND AMENDED FEDERAL HABEAS CORPUS PETITION, FILED NOVEMBER 7, 1996

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL NO: 1:CV-94-1481
(Judge Caldwell)
(Magistrate Judge Blewitt)

EDWARD R. COSS, JR.,

Petitioner

v.

LACKAWANNA COUNTY DISTRICT ATTORNEY and THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA,

Respondents

SECOND AMENDED HABEAS CORPUS PETITION

AND NOW comes the Petitioner, Edward R. Coss, Jr., by his attorney, Melinda C. Ghilardi, Esquire, First Assistant Federal Public Defender, and files the following Second Amendment to Coss' original Petition for Writ of Habeas Corpus which was filed on September 15, 1994. The Petition was also amended on November 29, 1995. The Petition and Amended Petition are incorporated herein by reference in their entirety.

Appendix 1

1. The convictions which Coss challenges in the instant Habeas Corpus Petition are for institutional vandalism, in violation of 18 Pa. C.S.A. § 3307(a)(3), criminal mischief, in violation of 18 Pa. C.S.A. § 3304(2) and simple assault, in violation of 18 Pa. C.S.A. § 2701(1). *Commonwealth v. Coss*, No. 86-645, Lackawanna County Court of Common Pleas.

2. On January 30, 1987, Coss was sentenced on the above-stated offenses as follows: Six (6) months to one (1) year in a state institution on the institutional vandalism charge; the criminal mischief charge merged with the institutional vandalism charge for sentencing purposes; and six (6) months to one (1) year in a state institution on the simple assault charge, to run consecutive to the institutional vandalism sentence.

3. Coss avers that he is being unlawfully held on the following grounds:

(1) Coss was denied his Sixth (6th) Amendment to effective assistance of trial counsel on the following grounds:

(A) Trial counsel failed to subpoena any of the witnesses Coss requested.

(B) Trial counsel failed to present the defense of self-defense to the simple assault charge as requested by Coss.

(C) Trial counsel proceeded with jury selection in Coss' absence and then

failed to permit him to participate when he arrived, resulting in the empaneling of two (2) jurors who were adverse to Coss and his family.

(D) Trial counsel failed to confer with Coss during trial.

(E) Trial counsel failed to file post-trial motions, as well as an appeal as requested by Coss.

(2) Coss was denied his Fourteenth (14th) Amendment due process rights when the trial court erroneously imposed an illegal sentence on the following grounds:

(A) The trial court erred when it considered inaccurate information at sentencing, i.e., a 1984 aggravated assault conviction that had been dismissed.

(B) The trial court erred when it considered Coss' prior juvenile convictions in imposing sentence in this misdemeanor case.

4. The above stated issues are meritorious and demonstrate that Coss was denied his due process right to a fair sentencing hearing and his Sixth (6th) Amendment right to effective assistance of counsel. Thus, Coss is entitled to a new trial

and sentencing hearing with regard to his institutional vandalism, criminal mischief, and simple assault convictions.

5. The issues presented in the within Second Amended Habeas Corpus Petition involve factual matters, and as such, cannot be decided by this Court without the benefit of an evidentiary hearing.

6. The within Second Amended Habeas Corpus Petition is presented in compliance with this Court's Order of October 23, 1996.

WHEREFORE, the Petitioner, Edward R. Coss, Jr., respectfully requests that this Honorable Court consider this Second Amendment to his original Petition for Writ of Habeas Corpus and that the Court conduct an evidentiary hearing with regard to same.

Date: November 7, 1996

Respectfully submitted,

s/ Melinda C. Ghilardi
Melinda C. Ghilardi, Esquire
First Assistant
Federal Public Defender
Attorney for Edward R. Coss, Jr.

116 N. Washington Avenue,
Suite 2C
Kane Professional Building
Scranton, PA 18503
(717) 343-6285

APPENDIX J — COMMONWEALTH'S AMENDED ANSWER TO SECOND AMENDED FEDERAL HABEAS CORPUS PETITION, FILED DECEMBER 26, 1996

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL NO: 1:CV-94-1481
(Judge Caldwell)
(Magistrate Judge Blewitt)

EDWARD R. COSS, JR.

Petitioner

VS.

LACKAWANNA COUNTY DISTRICT ATTORNEY and THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA

Respondents

AMENDED ANSWER TO SECOND AMENDED HABEAS CORPUS PETITION

AND NOW comes the Respondents, by and through its attorney, William P. O'Malley, Assistant District Attorney and Lisa Gillick, Assistant District Attorney and answers the Petitioner's Second Amended Habeas Corpus Petition as follows:

1. Admitted.

2. Admitted.

Appendix J

3. (1)(a-e) Respondent is lacking sufficient knowledge or information to answer paragraph 3(1), all of paragraph 3(1) is therefore denied and strict proof is demanded.

3. (2)(a-b) Denied.

4. The matters set forth in paragraph 4 are mere conclusions of law for which no answer is possible or required, but in any event, said matters are denied.

5. Denied. What is required is not an evidentiary hearing, but more explicit pleading by Petitioner.

6. Respondent is lacking sufficient knowledge or information to answer paragraph 6 and it is therefore denied.

WHEREFORE, the Respondents respectfully request that this Honorable Court deny the defendant's Petition for Habeas Corpus.

Respectfully submitted,

s/ William P. O'Malley
William P. O'Malley
Assistant District Attorney
Lackawanna County Courthouse
200 N. Washington Avenue
Scranton, PA 18503
Atty I.D. # 58520

s/ Lisa Gillick
Lisa Gillick
Assistant District Attorney
Atty I.D. # 69785